

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 17 June 2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District – Hansen, James and Donna, NWS-2008-772-NO

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: WA County/parish/borough: Whatcom City: Bellingham
Center coordinates of site (lat/long in degree decimal format): Lat. 48.8330252298069°N, Long. -122.516641480225°W.
Universal Transverse Mercator: Zone 10 N E

Name of nearest waterbody: Silver Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Bellingham Bay

Name of watershed or Hydrologic Unit Code (HUC): Strait of Georgia, 17110002

☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

☒ Office (Desk) Determination. Date: 17 June 2008

☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no “navigable waters of the U.S.” within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

☐ Waters subject to the ebb and flow of the tide.

☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** “waters of the U.S.” within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- ☐ TNWs, including territorial seas
- ☐ Wetlands adjacent to TNWs
- ☒ Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
- ☐ Non-RPWs that flow directly or indirectly into TNWs
- ☒ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- ☐ Impoundments of jurisdictional waters
- ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: Stream - 3, 350 linear feet: 4 feet wide (avg.) 0.30 acre

Wetlands: 1.62 acres (Wetlands A & B only).

NOTE: No jurisdictional determination for wetlands C, D, and E – not affected by project and will be protected from future development by conservation easement. These wetlands appears to drain south toward Silver Creek; a separate drainage than that evaluated in this document.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):³

☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain: .

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least “seasonally” (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: 955 **square miles**

Drainage area: 170 **acres**

Average annual rainfall: 35 inches

Average annual snowfall: 16 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☒ Tributary flows through **3** tributaries before entering TNW.

Project waters are **2-5** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **2-5** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW⁴: Water from wetlands A and B enter the Smith Road Ditch and flow 1,800 feet west before flowing into an unnamed tributary of Sliver Creek, which flows 1.2 miles southwest before flowing into Silver Creek, which flows 4.34 miles south before entering Bellingham Bay.

Tributary stream order, if known: 1st.

(b) General Tributary Characteristics (check all that apply):

Tributary is:

☐ Natural

☒ Artificial (man-made). Explain: Ditch along Smith Road is man made.

☐ Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):

Average width: 4 feet

Average depth: 3 feet

Average side slopes: **2:1**.

Primary tributary substrate composition (check all that apply):

☒ Silts

☒ Sands

☐ Concrete

☐ Cobbles

☒ Gravel

☐ Muck

☐ Bedrock

☒ Vegetation. Type/% cover: Grass species, 85%

☐ Other. Explain: .

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Stable banks over most of reach.

Presence of run/riffle/pool complexes. Explain: .

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): 3 %

(c) Flow:

Tributary provides for: perennial flow

Estimate average number of flow events in review area/year: continuous

Describe flow regime: **Persistent flow for 4 months out of the year.**

Other information on duration and volume: .

Surface flow is: **Pick List**. Characteristics: .

Subsurface flow: **Unknown**. Explain findings: .

☐ Dye (or other) test performed: .

Tributary has (check all that apply):

☒ Bed and banks

☒ OHWM⁵ (check all indicators that apply):

⁴ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

- | | |
|---|---|
| <input checked="" type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> the presence of litter and debris |
| <input type="checkbox"/> changes in the character of soil | <input checked="" type="checkbox"/> destruction of terrestrial vegetation |
| <input checked="" type="checkbox"/> shelving | <input type="checkbox"/> the presence of wrack line |
| <input checked="" type="checkbox"/> vegetation matted down, bent, or absent | <input checked="" type="checkbox"/> sediment sorting |
| <input type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> scour |
| <input type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community |
| <input type="checkbox"/> other (list): | |
- ☐ Discontinuous OHWM.⁶ Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- | | |
|--|--|
| <input checked="" type="checkbox"/> High Tide Line indicated by: | <input checked="" type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges | |
| <input type="checkbox"/> other (list): | |

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: Water is clear and water quality is good. Tributary conveys water from natural sources and runoff from agricultural/residential lands and roads.

Identify specific pollutants, if known: petrochemicals and fecal coliform.

(iv) Biological Characteristics. Channel supports (check all that apply):

- ☒ Riparian corridor. Characteristics (type, average width): Corridor from site to unnamed tributary is dominated by field Grasses.
- ☐ Wetland fringe. Characteristics: .
- ☐ Habitat for:
 - ☐ Federally Listed species. Explain findings:
 - ☐ Fish/spawn areas. Explain findings:
 - ☐ Other environmentally-sensitive species. Explain findings: .
 - ☐ Aquatic/wildlife diversity. Explain findings:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

3. Characteristics of all wetlands adjacent to the tributary (if any)

C. SIGNIFICANT NEXUS DETERMINATION

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:

2. RPWs that flow directly or indirectly into TNWs.

- ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
- ☒ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: **Per information provided by consultant and local property owners, road side ditch to unnamed tributary of Silver Creek has persistent flow for 4 months out of the year with peak flows from mid-January to mid-March.**

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☒ Tributary waters: **3, 350 linear feet: 4 feet wide (avg.) 0.30 acre**
- ☐ Other non-wetland waters: acres.

Identify type(s) of waters:

3. Non-RPWs⁷ that flow directly or indirectly into TNWs.

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- ☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
- ☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is

⁵A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁶Ibid.

⁷See Footnote # 3.

directly abutting an RPW:

- ☒ Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **The document titled “Wetland Delineation for Parcel # 390235-342496, Aldrich and W. Smith Road, Whatcom County, WA,” dated May 2007 identifies the boundary of onsite wetlands as extending to the edge of the Smith Road ditch with no intervening uplands, berms, etc..**

Provide acreage estimates for jurisdictional wetlands in the review area: **1.62 acres (Wetlands A & B only).**

NOTE: No jurisdictional determination for wetlands C, D, and E – not affected by project and will be protected from future development by conservation easement. These wetlands appears to drain south toward Silver Creek; a separate drainage than that evaluated in this document.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.
6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.
7. Impoundments of jurisdictional waters.⁸

- E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):⁹
- F. Non-jurisdictional waters, including wetlands (check all that apply):

SECTION IV: DATA SOURCES.

- A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: project drawings, wetland delineation, and mitigation plan.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
- ☒ Office concurs with data sheets/delineation report.
- ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps: .
- ☐ Corps navigable waters’ study: .
- ☐ U.S. Geological Survey Hydrologic Atlas: .
- ☐ USGS NHD data.
- ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: 7.5min, Ferndale Quad.
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
- ☐ National wetlands inventory map(s). Cite name: .
- ☒ State/Local wetland inventory map(s):WA Dept. of Ecology, 2001.
- ☐ FEMA/FIRM maps: .
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date):WA Dept of Ecology, 2005.
- or ☐ Other (Name & Date): .
- ☐ Previous determination(s). File no. and date of response letter: .
- ☐ Applicable/supporting case law: .
- ☐ Applicable/supporting scientific literature: .
- ☐ Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD:

⁸ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

⁹ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.